

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

TYRONE MANSON ST. OURS,

Appellant.

No. 33528-0-II

UNPUBLISHED OPINION

HOUGHTON, P.J. -- Tyrone St. Ours appeals his conviction of unlawful possession of a controlled substance (cocaine), arguing that the trial court erred in denying his motion to suppress. Pro se, he asserts additional grounds for reversal, including ineffective assistance of counsel and a speedy trial violation. We affirm.

**FACTS**

On February 27, 2005, Tacoma Police Officer Brian Kelley was on routine patrol duty in Tacoma's Hilltop neighborhood, an area known for drug-related activity. While traveling on Tacoma Avenue, he made a u-turn and began driving directly behind a pickup truck.

After following the truck for about 10 blocks, Kelley saw it make an improper left-hand turn. Specifically, the truck came to a complete stop before the driver activated its turn signals. Kelley testified that he probably would not have stopped the truck for this infraction if it had

occurred only once. But as Kelley continued to follow the truck, he saw it make two more improper turns at the next two intersections. Kelley pulled the truck over. He was within his regular patrol area when he made the stop.

Through a records check, Kelley discovered that the driver, St. Ours, had an outstanding warrant for escape. The truck's passenger also had an outstanding warrant. Kelley arrested both men. During a search incident to arrest, Kelley discovered rock cocaine in St. Ours's pants pocket and on the truck's passenger seat.

The State charged St. Ours with unlawful possession of a controlled substance (cocaine), a violation of RCW 69.50.4013(1).

St. Ours moved to suppress the drug evidence, arguing that the traffic stop was pretextual. At the suppression hearing, Kelley related the facts set forth above. He also testified that at the time he began following the truck, his attention was focused on pedestrian activity, not on the truck's occupants. He did not recognize the occupants because the truck's back window was tinted. At the time he pulled the truck over, he had no suspicions of wrongdoing apart from the traffic infractions. Rather, he testified, he made a routine traffic stop, similar to those he makes four or five times each week.

St. Ours did not testify at the suppression hearing. His counsel argued that the stop was pretextual because Kelley was not a traffic enforcement officer, but a patrol officer primarily focused on suspected drug activity. He argued that because Kelley began following him in the Hilltop neighborhood, then followed him for 10 blocks before stopping him, it raised an inference that he had been looking for a pretext to investigate suspected criminal activity.

The trial court denied the suppression motion, stating:

The court finds that there was no evidence presented that would lead to the conclusion that this was a pretext stop. The officer did not recognize the occupants of the vehicle and had not had prior contacts with the defendant. The officer was on patrol and makes an average of 4-5 traffic stops a week. The officer was on routine patrol and stopped the vehicle for improper signaling before making a turn.

The court finds that there was no evidence presented that would lead to the conclusion that the stop for the traffic infraction was used as a pretext to conduct a criminal investigation.

There was no evidence presented that suggested that the officer's subjective intent was to stop the vehicle for the infraction, as a pretext to conduct a criminal investigation.

Clerk's Papers at 9.

The jury found St. Ours guilty as charged and he appeals.

#### ANALYSIS

St. Ours argues that the trial court erred in denying his suppression motion because the officer's stop was pretextual. We review a trial court's denial of a suppression motion by examining whether substantial evidence supports the challenged findings and whether those findings support the trial court's conclusions of law. *State v. Ross*, 106 Wn. App. 876, 880, 26 P.3d 298 (2001), *review denied*, 145 Wn.2d 1016 (2002). Substantial evidence is that sufficient to persuade a fair-minded person of the truth of the declared premises. *State v. Jeannotte*, 133 Wn.2d 847, 856, 947 P.2d 1192 (1997). We leave credibility determinations to the fact finder and we do not review them on appeal. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). We treat unchallenged findings as verities on appeal. *Ross*, 106 Wn. App. at 880.

A pretextual traffic stop violates article I, section 7 of our state constitution because it is a warrantless seizure. *State v. Ladson*, 138 Wn.2d 343, 358, 979 P.2d 833 (1999). Pretext is a "false reason used to disguise a real motive." *Ladson*, 138 Wn.2d at 359 n.11 (quoting Patricia

Leary & Stephanie Rae Williams, *Toward a State Constitutional Check on Police Discretion to Patrol the Fourth Amendment's Outer Frontier: A Subjective Test for Pretextual Seizures*, 69 Temp. L. Rev. 1007, 1038 (1996)). A pretextual traffic stop occurs when the police stop a citizen not to enforce the traffic code, but to investigate some unrelated criminal activity. *Ladson*, 138 Wn.2d at 351. On the other hand, when enforcement of the traffic code is the actual reason for the traffic stop, the stop is not pretextual even if the officer also suspects other criminal activity. *State v. Hoang*, 101 Wn. App. 732, 742, 6 P.3d 602 (2000), *review denied*, 142 Wn.2d 1027 (2001). In determining whether a given stop was pretextual, a court considers the totality of the circumstances, including the officer's subjective intent as well as the objective reasonableness of the officer's behavior. *Ladson*, 138 Wn.2d at 358-59.

St. Ours does not dispute that he used his turn signals improperly on three different occasions. But he argues that the stop was pretextual, as evidenced by the officer's behavior in making a u-turn and then following him for 10 blocks before stopping him. He asserts that because the officer began following him in the Hilltop neighborhood then traveled outside that high-crime area to continue the pursuit further, it is reasonable to infer that the officer was looking for an excuse to stop him.

St. Ours relies on *Ladson*, but that case is factually distinguishable. In *Ladson*, officers admitted that they relied on a vehicle's expired license tabs as a pretext to stop a vehicle and investigate suspected drug-dealing activity. The officers were part of a "proactive gang patrol" that did not routinely enforce the traffic code, but seized on traffic code violations as a means to pull people over for questioning. *Ladson*, 138 Wn.2d at 346.

St. Ours also relies on *State v. DeSantiago*, 97 Wn. App. 446, 983 P.2d 1173 (1999).

There, an officer was monitoring an apartment building for suspected drug activity. The officer saw a person enter and exit the building quickly, then drive away. The officer followed the vehicle for several blocks, looking for a reason to stop it. When the vehicle made an improper left-hand turn, the officer stopped it. In reversing the defendant's later convictions of unlawful possession of methamphetamine and a firearms violation, the court concluded that the stop was pretextual because the officer clearly was looking for an excuse to investigate suspected drug-related activity. *DeSantiago*, 97 Wn. App. at 452-53.

Unlike the officers in *Ladson* and *DeSantiago*, Kelley was on routine patrol at the time of the stop. That he patrolled an area known for drug-related activity does not mean that he necessarily was focused on narcotics investigation at the time of the stop. Kelley testified that his patrol range extended from the Hilltop neighborhood district to Division Street, including the area where he stopped St. Ours. He also stated that he made several routine traffic stops each week. Unlike in *Ladson* and *DeSantiago*, Kelley did not state that he intended to use a traffic violation as an excuse to investigate suspected criminal activity.

St. Ours contends that the officer's failure to cite him for the alleged traffic infraction supports an inference that the stop was pretextual. An officer's decision not to issue a traffic citation is a factor to be considered in determining the officer's subjective intent in stopping a vehicle, but it is not dispositive. *Hoang*, 101 Wn. App. at 742 (police are not required "to issue every conceivable citation as a hedge against an eventual challenge to the constitutionality of a traffic stop allegedly based on pretext").

Here, the trial court considered the officer's testimony and defense counsel's arguments and considered the officer's testimony credible. In unchallenged findings, the trial court found

that Kelley was on routine patrol, that he makes an average of four to five traffic stops each week, and that he stopped St. Ours's vehicle for improper signaling. The court further found that Kelley did not recognize the occupants of the vehicle before making the stop and had no prior contacts with St. Ours. The court found there was no evidence that Kelley stopped the vehicle in order to conduct a criminal investigation. Kelley's testimony provides substantial evidence in support of these findings, and the findings support the trial court's conclusion that the stop was not pretextual.<sup>1</sup> The trial court did not err in denying the suppression motion.

#### Statement of Additional Grounds (SAG)<sup>2</sup>

In his SAG, St. Ours relies on facts not in evidence to argue that the traffic stop was pretextual. He asserts that Kelley knew him from prior police contacts; obviously recognized him while they were facing each other at a stop light; and deliberately followed him, looking for an excuse to pull him over. St. Ours did not testify at the suppression hearing, so his version of events was not before the court.<sup>3</sup> The court found Kelley's testimony credible. As already stated, Kelley's testimony supports the trial court's conclusion that the stop was not pretextual and St. Ours's argument fails.

#### Ineffective Assistance of Counsel

St. Ours also argues that he received ineffective assistance of counsel because his trial

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<sup>1</sup> St. Ours does not assign error to these findings because they are combined with the court's conclusion of law. Although not labeled as such, the findings are obviously factual findings, subject to review for substantial evidence. *See State v. Frazier*, 82 Wn. App. 576, 589 n.13, 918 P.2d 964 (1996).

<sup>2</sup> RAP 10.10(a).

<sup>3</sup> But *after* the court's ruling, St. Ours protested the decision. The court allowed him to express his view of the facts, but it did not alter the ruling.

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counsel did not spend sufficient time conferring with him, urged him to plead guilty, and failed to obtain a test to prove that his DNA was not on the cocaine recovered by the officer.

To prevail in an ineffective assistance claim, a defendant must show both deficient performance and resulting prejudice. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). To establish deficient performance, a defendant must show that the attorney's performance fell below an objective standard of reasonableness. *McNeal*, 145 Wn.2d at 362.

To establish prejudice, a defendant must demonstrate that, but for the deficient representation, the trial outcome would have differed. *McNeal*, 145 Wn.2d at 362. We presume that the defendant received adequate representation. *Strickland v. Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 675 (1984); *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). If defense counsel's performance can be characterized as a legitimate trial strategy or tactic, an ineffective assistance claim fails. *McNeal*, 145 Wn.2d at 362.

St. Ours does not establish deficient performance. He fails to show how additional time conferring with his defense counsel would have aided his defense. Further, defense counsel's advice that St. Ours plead guilty is a legitimate tactical decision, particularly in view of the State's strong evidence of guilt. Finally, defense counsel could have reasonably believed that a DNA analysis of the cocaine would not produce reliable, probative evidence or that the court would deny a request to order such a costly, time-consuming test in view of its questionable probative value.

St. Ours's ineffective assistance claim fails.

#### Speedy Trial

St. Ours also argues that State violated his right to a speedy trial right, referring to continuances that are not part of the record on appeal. SAG at 4.

An incarcerated defendant generally must be brought to trial within 60 days of



arraignment. CrR 3.3(b)(1)(i), (c)(1). But a court may continue a trial at the request of either party or on its own motion when necessary in the administration of justice, provided that the delay will not prejudice the defendant. CrR 3.3(f)(2). Such a continuance extends the time for trial. CrR 3.3(e)(3). St. Ours asserts that he never agreed to a continuance. Nevertheless, by court rule, he waived objection to any continuance brought on his behalf. CrR 3.3(f)(2) (“The bringing of such motion by or on behalf of any party waives that party’s objection to the requested delay.”). And the court had discretion to grant a continuance at the State’s request, with or without St. Ours’s consent. The record does not support his contention that the court improperly continued the trial.

St. Ours states that any continuance “could not go over 15 days incarcerated 30 days not incarcerated,” in apparent reference to CrR 3.3(g). SAG at 12. That provision gives the State a single opportunity to “cure” the expiration of a speedy trial period. It does not apply here because no evidence in the record discloses that the speedy trial period expired rather than being tolled.

St. Ours fails to establish a violation of his speedy trial rights.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Houghton, P.J.

We concur:

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Bridgewater, J.

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Hunt, J.